

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

VINCENT DIMIELI,

Plaintiff.

v.

GALVEX HOLDINGS LTD., GALVEX TRADE LTD,
GALVEX SERVICESOU, GALVEX ESTONIA OU,
GALVEX INTERTRADEOU, GALVEX CAPITAL
L.L.C., ALVAREZ & MARSAL EUROPE LTD.,
SILVER POINT CAPITAL, L.P., SILVER POINT
EUROPE LLP and SILVER POINT GROUP, LLP,

Defendants.

Civil No. 07CV4835

MOTION TO DISMISS

PLEASE TAKE NOTICE THAT, upon the accompanying Affidavit of George W. Galgano dated September 20, 2007 and all prior pleading and proceedings in this action, defendant, GALVEX CAPITAL LLC, by and through their undersigned counsel, will move this Court before the Honorable John G. Koeltl, at the United States Court House, 500 Pearl Street, New York, New York 10007, for an order pursuant to Federal Rules of Civil Procedure 12(b)(1), dismissing the Complaint.

Dated: White Plains, New York
September 20, 2007


George W. Galgano (GG-8009)
GALGANO & ASSOCIATES

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Attorney for Defendant
Galvex Capital LLC

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

VINCENT DIMIELI,

Plaintiff,

V.

**GALVEX HOLDINGS LTD., GALVEX TRADE LTD,
GALVEX SERVICESOU, GALVEX ESTONIA OU,
GALVEX INTERTRADEOU, GALVEX CAPITAL
L.L.C., ALVAREZ & MARSAL EUROPE LTD.,
SILVER POINT CAPITAL, L.P.,SILVER POINT
EUROPE LLP and SILVER POINT GROUP, LLP,**

Defendants.

Civil No. 07CV4835

) **AFFIDAVIT OF COUNSEL IN**
) **SUPPORT OF DEFENDANT,**
) **GALVEX CAPITAL L.L.C.'S**
) **MOTION TO DISMISS**
) **PURSUANT TO RULE 12(B)**
) **(1) OF THE FEDERAL RULES**
) **OF CIVIL PROCEDURE**

State of New York

County of Westchester

I, GEORGE W. GALGANO JR., being duly sworn, hereby state:

1. I am over the age of eighteen and believe in the obligation of the oath.
2. I make this affidavit based upon my own personal knowledge except when statements are
sly made upon information and belief.

3. I am an attorney at the law firm of Galgano & Associates, counsel for defendant, GALVEX CAPITAL L.L.C in the above referenced case, and as such I am familiar with the facts stated herein.

4. This affidavit is made in support of Defendant, GALVEX CAPITAL LLC's motion to dismiss Plaintiff's complaint pursuant to Rule 12 (b)(1) of the Federal Rules of Civil Procedure.

5. On or about August 20, 2007, defendants, GALVEX TRADE LTD, GALVEX SERVICES OU, GALVEX SERVICES OU, GALVEX ESTONIA OU, GALVEX INTERTRADE OU, ALVAREZ & MARSAL EUROPE LTD., SILVER POINT CAPITAL L.P., SILVER POINT EUROPE LLP and SILVER POINT GROUP, LLP (hereinafter "remaining defendants") filed a motion to dismiss plaintiff's complaint.

6. Among the arguments advanced by the remaining defendants was that this Court lacked subject matter jurisdiction over this action due to the absence of complete diversity between the parties. *See* Remaining Defendants' Memorandum of Law, Argument I, pp. 3-5.

7. Defendant, GALVEX CAPITAL LLC respectfully joins in this argument and requests that the Complaint be dismissed for the reasons set forth in the remaining defendants' motion to dismiss, in particular the argument that this Court lacks subject matter jurisdiction of this controversy. In this regard, GALVEX CAPITAL LLC incorporates by reference in this motion, the remaining defendants' motion, specifically the Declarations of GAY BRONSON, ROBERT O'SHEA and SHEPARD C. SPINK, all of which have been previously filed with this Court.


George W. Galgano, Jr.

Sworn to before me this 20 day
of September 2007


Notary Public

SAMANTHA WILLIAMS
Notary Public State of New York
No. 02WI6087486
Qualified in Westchester County
Commission Expires Feb. 18th 2011